IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2019

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.4865 of 2016

1. M/s.A.A. Associates
   rep. by its Proprietrix,
   Mrs.A.Teresa Juliet,
   W/o.M.Rajesh Kannan,
   No.27, P.A.Y.Nagar, Pudukkottai Road,
   Thanjavur-613 005.

2. M.Rajesh Kannan .. Petitioners

Vs.

1. Indian Overseas Bank,
   rep. by its Managing Director
   and Chief Executive Officer,
   No.763, Anna Salai,
   Chennai-600 002.

2. Indian Overseas Bank,
   rep. by its Manager,
   North Main Street,
   Thanjavur.

3. Indian Overseas Bank,
   rep. by its Manager,
   Melaullur Branch,
   Orathanadu Taluk,
   Thanjavur. .. Respondents

* * *

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents herein to return the original title deeds deposited by the second petitioner herein with the second respondent herein by means of Memorandum of Deposit of Title Deed dated 22.08.2013 registered as document No.4795 of 2013 in the office of the District Registrar, Thanjavur.

* * *

For Petitioners : Mr.S.Prem Auxilian Raj

For Respondents : Mr.V.Adhivarahan
Standing Counsel

O R D E R

The prayer of the petitioners is to direct the respondents herein to return the original title deeds deposited by the second petitioner herein with the second respondent by means of Memorandum of Deposit of Title Deed dated 22.08.2013 registered as document No.4795 of 2013 in the office of the District Registrar, Thanjavur.

2. The proprietrix of the first petitioner firm is the wife of the second petitioner. The first petitioner firm availed a sum of Rs.20,00,000/- as loan from the third respondent and the second petitioner, being the guarantor, executed a Memorandum of Deposit of Title Deed dated 22.08.2013 in favour of the respondents, which was registered as document No.4795 of 2013 in the office of the District Registrar, Thanjavur, and handed over the original title deeds to the respondents 2 and 3. The said loan was repaid to the third respondent, for which, endorsement has been made by the third respondent. Having closed the loan account, the petitioners approached the respondent with a request to return the original title deeds. However, respondents 2 and 3 have not returned the original title deeds. A representation dated 14.12.2015 given in this regard to the respondents also failed to evoke any response. Hence, the petitioners are before this Court seeking for the relief cited supra.

3. Contradicting the claim of the petitioners, a counter affidavit has been filed by the respondents tabulating the loans availed by the petitioners. It is stated that the colour given by the petitioners that they have settled the entire loan is false and since there are overdues running to several lakhs, all the accounts of the petitioners have been declared as Non Performing Assets (NPAs) and the petitioners are attempting to create third party rights in the interest of the property, which is the only valuable security to recover the loan amount. It is further stated that they retained the title deeds in exercise of its rights of general lien. In those circumstances, the respondents prayed for dismissal of this writ petition.

4. Heard the learned counsels on either side and perused the materials placed before this Court.

5. The facts are not in dispute. However, it is the contention of the learned counsel for the petitioners that as the loan account, to which the title deeds were mortgaged was settled, the respondents cannot withhold the original documents, which argument is assailed by the learned counsel for the

respondents stating that it is well within their power to retain the title deeds of the mortgaged properties for non-payment of the other loan accounts exercising the general lien.

6. From the submissions made by the respondents/Bank, it is seen that besides the loan that was discharged, there are several other loans taken by the petitioner and her husband undertaking to discharge the same in their capacity as Borrower/co-borrower, guarantor/surety as the case may be and also had defaulted in repaying the loans. It is further pointed out that the petitioner deliberately repaid the loan to which the security given is a prime property. The petitioners said to have entered into an agreement of sale also to dispose of the property. The list of loan facilities availed by the petitioners and defaulted as mentioned in the counter affidavit are not specifically denied by them. As all the accounts of the petitioners are declared as NPAs, the writ is filed to preclude the Bank from taking any enforcement measures.

7. At this juncture, it is relevant to refer to the judgment of the Apex Court in Syndicate Bank V. Vijay Kumar, AIR 1992 SC 1066, wherein, the scope and meaning of the expression “Banker's lien” was discussed as follows :

> 6. In Halsbury's Laws of England, Vol.20, 2nd Edn. p.552, para 695, lien is defined as follows:
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> > "Lien is in its primary sense is a right in one man to retain that which is in his possession belonging to another until certain demands of the person in possession are satisfied. In this primary sense it is given by law and not by contract."
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> In Chalmers on Bills of Exchange, Thirteenth Edition Page 91 the meaning of "Banker's lien" is given as follows:
>
> > "A banker's lien on negotiable securities has been judicially defined as "an implied pledge."A banker has, in the absence of agreement to the contrary, a lien on all bills received from a customer in the ordinary course of banking business in respect of any balance that may be due from such customer."
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> In Chitty on Contract, Twenty-sixth Edition, Page 389, Paragraph 3032 the Banker's lien is explained as under:
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> > "By mercantile custom the banker has a general lien over all forms of commercial paper deposited by or on behalf of a customer in the

> oridinary course of banking business. The custom does not extend to valuables lodged for the purpose of safe custody and may in any event be displaced by either an express contract or cirumstances which show an implied agreement inconsistent with the lien.... The lien is applicable to negotiable instruments which are remitted to the banker from the customer for the purpose of collection. When collection has been made the proceeds may be used by the banker in reduction of the customer's debit balance unless otherwise earmarked."
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> (emphasis supplied)

In Paget's Law of Banking, Eighth Edition, Page 498 a passage reads as under;

> "THE BANKER'S LIEN Apart from any specific security, the banker can lock to his general lien as a protection against loss on loan or overdraft or other credit facility. The general lien of bankers is part of law merchant and judicially recognised as such."

In Brandao v. Barnett, (1846)12 Cl. and Fin.787 it was staled as under:

> "Bankers most undoubtedly have a general lien on all securities deposited with them as bankers by a customer, unless there be an express contract, or circumstances that show an implied contract, inconsistent with lien."

The above passages go to show that by mercantile system the Bank has a general lien over all forms of securities or negotiable instruments deposited by or on behalf of the customer in the ordinary course of banking business and that the general lien is a valuable right of the banker judicially recognised and in the absence of an agreement to the contrary, a Banker has a general lien over such securities or bills received from a customer in the ordinary course of banking business and has a right to use the proceeds in respect of any balance that may be due from the customer by way of reduction of customer's debit balance. Such a lien is also applicable to negotiable instruments including FDRs which are remitted to the Bank by the customer for the purpose of collection. There is no gainsaying that such a lien extends to FDRs also which arc deposited by the customer."

8. Following the aforesaid judgment, the First Bench of this Court in the latest judgment dated 31.10.2018 in the case of C.R.Ramachary and another V. Indian Overseas Bank, rep. by its Chief Managaer and others, (W.P.No.16812 of 2018) held thus :

> "6. The first decision relied on by the learned counsel for the petitioners is State Bank of India and another v. Jayanthi and others, reported in 2011 (3) MLJ 245 : 2011 (2) CTC 465. He pointed out that in the said case it was observed that the deposit of title deeds by which the mortgage was created by the deceased borrower, N.P.S.Mahendran, was for a specific purpose to cover an advance for a specific loan. When such is the situation, the borrower having deposited the documents in order to secure a specific transaction, the bank cannot contend that they could hold the documents for a balance due in a different loan account, where the said N.P.S.Mahandran is not a borrower. We have carefully perused the said decision and we find that as far as the second loan account is concerned, the deceased N.P.S.Mahendran was not a borrower. In such circumstances, it was held that the documents furnished as security in relation to the first loan account could not be withheld in relation to the other loan account where deceased N.P.S.Mahandran was not the borrower. However, such are not the facts in the present case. In the present case, admittedly, the first petitioner is the borrower in relation to all the three loans. Hence, this decision would not apply to the case of the petitioners.
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> 12. In the decisions relied upon by the learned counsel for the petitioners all the properties did not belong to the borrower. In the present case, the properties belong to the first petitioner/borrower. Therefore, in view of the finding of the Supreme Court, as reproduced above, we are of the view that the respondent bank has a general lien over the securities and other instruments deposited by the petitioner with the bank in the ordinary course of banking and such general lien being a valuable right of the bank as per the decision of the Supreme Court, it cannot be ignored in the absence of an agreement to the contrary. In such case, the respondent bank is well within its rights to retain the documents furnished by way of collateral security in relation to the earlier two loan accounts which were settled, as the third loan was not settled. In such view of the matter, we do not find any merit in the submissions

made by the learned counsel for the petitioners."

9. The learned counsels for the parties, inter alia, relied on the judgment of this Court in Sree Vadivambigai Ginning Industries Pvt. Ltd. V. Tamil Nadu Mercantile Bank Ltd., 2015 (2) MWN (Civil) 424. In respect of the judgments relied on by the learned counsels for the parties, this Court is of the view that the same are delivered on the facts and circumstances of those cases and the same are factually distinguishable from the instant case.

10. In the case on hand also, the facts are similar to the one decided by the First Bench in C.R.Ramachary (cited supra), as there are four separate loans in the name of either the proprietrix A.Teresa Juliet or her husband M.Rajesh Kannan, which have been declared as NPAs for default.

11. For the foregoing reasons coupled with the judgments referred supra, this Court is of the view that the respondent bank has a general lien over the instruments deposited by the petitioners with the bank in the ordinary course of banking and such banker's general lien is a valuable right of the bank, which cannot be ordinarily interfered with by this Court.

12. In the result, this writ petition fails and the same is dismissed. There will be no order as to costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Managing Director
and Chief Executive Officer,
Indian Overseas Bank,
No.763, Anna Salai,
Chennai-600 002.

2. The Manager,
Indian Overseas Bank,
North Main Street, Thanjavur.

3. The Manager,
Indian Overseas Bank,
Melaullur Branch, Orathanadu Taluk,
Thanjavur.

+1cc to M/s.K.Sumathi, Advocate sr.no.25657
+1cc to M/s.Jagadish, Advocate sr.no.76075

W.P.No.4865 of 2016

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nr 09/05/2019